

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|-------------------------------|---|--------------|
| RAFAEL MARRERO and | : | CIVIL ACTION |
| WANDA MARRERO, | : | |
| Plaintiffs | : | |
| | : | |
| v. | : | No. 96-8534 |
| | : | |
| CITY OF PHILADELPHIA, et al., | : | |
| Defendants | : | |

MEMORANDUM

Broderick, S.J.

July 29, 1997

Plaintiffs Rafael and Wanda Marrero ("Plaintiffs") filed this complaint pursuant to 42 U.S.C. § 1983, alleging violations of their Fourth, Fifth, and Fourteenth Amendment rights and violations of state law, including false imprisonment, abuse of process, malicious prosecution, and intentional infliction of emotional distress. Defendants Micewski, Eggles, and Sunderhauf, police officers with the Philadelphia Police Department and the Pennsylvania State Police, have filed a Motion to Dismiss Plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6) on the basis that Plaintiffs' claims are barred by the statute of limitations.

For the reasons stated below, the Court will grant Defendants' motion in part and deny Defendants' motion in part.

Plaintiff Rafael Marrero was arrested "on or about" April 6, 1994 by police officers Micewski, Eggles, and Sunderhauf and charged with Intent to Deliver Controlled Substances and Knowing

Intentional Possession of a Controlled Substance. Mr. Marrero remained in custody on bail of one million dollars, subsequently reduced to \$700,000, from April 6, 1994 until February 29, 1996 when he was released on his own recognizance. Mr. Marrero, however, remained in custody until June of 1996 on an INS detainer. After being released from the INS detainer in June 1996, Mr. Marrero attended a court hearing later in June of 1996 at which the charges against him were dismissed.

In reviewing a Motion to Dismiss pursuant to Rule 12(b)(6), the Court accepts as true all factual allegations contained in the complaint, as well as all reasonable inferences which could be drawn therefrom, and views them in the light most favorable to the plaintiff. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Zlotnick v. TIE Communications, 836 F.2d 818, 819 (3d Cir. 1988).

All Plaintiffs' claims relating to the April 6, 1994 arrest, including all § 1983 claims and state tort claims of false arrest, false imprisonment, excessive use of force, abuse of process, and intentional infliction of emotional distress, will be dismissed as time-barred. The statutory period during which Plaintiffs' could have pursued their § 1983 claims such as false arrest, false imprisonment, excessive use of force, and excessive bail began to accrue at the time of Mr. Marrero's arrest. See Rose v. Bartle, 871 F.2d 331, 350-51 (3d Cir. 1989). It is clear that Pennsylvania's personal injury law provides a two year limitations period for § 1983 actions. Wilson v. Garcia, 471

U.S. 261, 276, 280 (1985); 42 Pa. Cons. Stat. Ann. § 5524(1) (Purdon Supp. 1997). Plaintiffs' state law claims such as negligence, false imprisonment, abuse of process, and intentional infliction of emotional distress are also subject to the two year statute of limitations period, likewise beginning at the time of the arrest.

Because Mr. Marrero was arrested on April 6, 1994 and Plaintiffs' complaint was filed on December 20, 1996, eight months beyond the expiration of the two year limitations period, all claims which stem from Mr. Marrero's arrest, including all Constitutional and state tort claims, are dismissed as time-barred.

Plaintiffs also assert a malicious prosecution claim against the moving defendants. Since the limitations period for a malicious prosecution claim did not begin to accrue until the criminal proceedings against Mr. Marrero were dismissed in June, 1996, Plaintiffs' malicious prosecution allegation remains, both as a § 1983 claim and a state tort claim. See Rose, 871 F.2d at 348-50.

In their motion to dismiss, Defendants' claim that they have qualified immunity from Plaintiffs' attempt to assert a malicious prosecution claim. The Third Circuit has held that the question of qualified immunity requires a fact-intensive analysis "not only of the clear establishment of the right that the official is alleged to have violated, but also of the specific official actions alleged to have violated that right." Grant v. City of Pittsburgh, 98 F.3d 116, 121 (3d Cir. 1996)(citations omitted).

After careful review of Plaintiffs', therefore, the Court finds that it lacks the necessary factual basis to determine whether the Defendants are entitled to qualified immunity from Plaintiffs' claim of malicious prosecution.

Accordingly, for the reasons set forth above, Plaintiffs' § 1983 claims alleging false arrest, false imprisonment, excessive use of force, and excessive bail and state law claims alleging negligence, false imprisonment, abuse of process, and intentional infliction of emotional distress will be dismissed. Plaintiffs' malicious prosecution allegation survives Defendants' motion and may proceed.

An appropriate order follows:

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| Defendants | : | |

ORDER

AND NOW, this 29th day of July, 1997; upon consideration of Defendants' motion to dismiss and Plaintiff's response thereto; for the reasons set forth in the Court's accompanying memorandum;

IT IS ORDERED: Defendants' Motion to Dismiss Plaintiffs' § 1983 claims alleging false arrest, false imprisonment, excessive use of force, and excessive bail and state law claims alleging negligence, false imprisonment, abuse or process, and intentional infliction of emotional distress is **GRANTED**.

IT IS FURTHER ORDERED: Defendants' motion to dismiss Plaintiffs' § 1983 and state law malicious prosecution allegation is **DENIED**.

RAYMOND J. BRODERICK, S.J.